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Attorneys for Plaintiff
VERIGY US, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

VERIGY US, INC, a Delaware Corporation,
Plaintiff,

vs.

ROMI OMAR MAYDER, an individual;
WESLEY MAYDER, an individual; SILICON
TEST SYSTEMS, INC., a California Corporation;
and SILICON TEST SOLUTIONS, LLC, a
California Limited Liability Corporation,
inclusive,

Defendants.

Case No. C07 04330 RMW (HRL)

**DECLARATION OF JOHN W. FOWLER
IN SUPPORT OF VERIGY'S MOTION TO
STRIKE**

Hearing: None Set
Judge: Honorable Howard R. Lloyd

Complaint Filed: August 22, 2007
Trial Date: None Set

1 I, John W. Fowler, declare as follows:

2 1. I am an attorney licensed to practice law before all of the courts of the State of
3 California and am admitted to practice in this Court. I am a partner in the law firm of Bergeson,
4 LLP, counsel of record for Plaintiff Verigy US, Inc. ("Verigy") in the above-captioned action. I
5 have personal knowledge of the facts set forth in this declaration, and, if called to do so, I could
6 and would competently testify thereto.

7 2. I submit this declaration in support of Verigy's Motion To Strike Confidential
8 Settlement Communications (the "Motion").

9 3. On or about July 9, 2007, I notified defendants by letter that Verigy had reason to
10 believe that Romi Mayder was using Verigy Confidential Information in his businesses in
11 violation of Mr. Mayder's agreement with Verigy.

12 4. Romi Mayder then telephoned me and told me that he was not using any Verigy
13 Confidential Information. I declined to discuss this issue with Mr. Mayder and advised him that
14 he should retain an attorney. Shortly thereafter I was contacted by Mount and Stoelker who
15 advised me that the firm represented Romi Mayder. A few days later Mount and Stoelker told me
16 they represented all of the defendants.

17 5. A conference call was scheduled for July 18, 2007 with counsel and the parties to
18 explore the possibility of pre-litigation settlement.

19 6. On July 17, 2007, in preparation for the conference, I sent the enclosed email
20 (Exhibit A) to Mr. Pasquinelli and Mr. Mount asking for agreement that Section 1152 of the
21 California Evidence Code would apply to anything said in the conference. Not having received a
22 response, at the beginning of the July 18 conference I refused to proceed until Mr. Mount agreed
23 that communications between us regarding Verigy's dispute with Mr. Mayder and his companies
24 would be confidential settlement discussions protected by the applicable state and federal rules.
25 Mr. Mount agreed to this condition and further agreed that any follow up discussions would be
26 covered as well. Our settlement discussions on July 18 included the issues of preservation of Mr.
27 Mayder's computer drives and a possible agreement on procedures to determine whether
28 Defendants had or were using Verigy Confidential Information. We discussed a possible

1 agreement for the examination of electronic data and documents by a qualified third party in an
2 effort to resolve the dispute without litigation. The subject of this Motion, Exhibit C, was a
3 communication directly related to the continuation of those settlement negotiations. Exhibit C
4 was emailed to Defendants' counsel in an effort to reach agreement on the how to facilitate a
5 settlement.

6 8. I routinely reviewed all emails between Ms. Morton and counsel for the Defendants
7 including her July 24 email to Defendants' counsel. A true copy of that email is attached to her
8 letter to the Court dated October 27, 2007 as Exhibit B. In that email she reminds Defendants'
9 counsel that the document attached (a proposed protocol) was a Confidential Settlement
10 Communication under both state and federal rules. Defendants did not at any time suggest that
11 these documents or communications were not confidential settlement communications. Had
12 Defendants' counsel indicated at any time that our communications were not confidential I would
13 have terminated the negotiations. Specifically, I would have instructed Ms. Morton not to
14 communicate further regarding a search protocol and not to send our proposed search terms.

15 9. Verigy abandoned these pre-litigation settlement negotiations after it discovered
16 from Robert Powchowski, a former business associate of Romi Mayder, that Romi Mayder,
17 contrary to his initial representation to me, had in fact used Verigy Confidential Information in his
18 STS ventures.

19 I declare under penalty of perjury under the laws of the United States of America that the
20 foregoing is true and correct and that this declaration was executed this 15th day of November,
21 2007 at San Jose, California.

22
23 /s/
24 John W. Fowler
25
26
27
28

EXHIBIT A

Shauna Walker

From: John Fowler
Sent: Tuesday, July 17, 2007 10:56 AM
To: 'Kevin M. Pasquinelli'; 'Daniel S. Mount'; 'Michelle McManus'
Cc: Mindy Morton; Shauna Walker
Subject: RE: Verigy v. Mayder

Dan and Kevin:

Do you agree that our conference tomorrow is for the purpose of resolving issues regarding Verigy's trade secrets and that Section 1152 of the California Evidence Code applies to anything said during the conference?

Jay

From: Shauna Walker
Sent: Tuesday, July 17, 2007 9:38 AM
To: 'Kevin M. Pasquinelli'; Daniel S. Mount; Michelle McManus
Cc: John Fowler; Mindy Morton
Subject: RE: Confirmation of meeting time.

Here is the call-in information for Wednesday (7/18/07) at 10:00 a.m. PDT:

Please dial 1-877-322-9654. You will be asked to enter your participant code number (710836). You will be automatically joined to the conference call. Should you need assistance during the conference call, please press # then 0 for a list of menu options.

Thank you,

Shauna M. Walker
Assistant to Daniel J. Bergeson, Esq.
Assistant to Caroline McIntyre, Esq.
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11/15/2007

From: Kevin M. Pasquinelli [mailto:kpasquinelli@MOUNT.com]
Sent: Monday, July 16, 2007 3:50 PM
To: John Fowler
Cc: Daniel S. Mount; Michelle McManus; Shauna Walker
Subject: Confirmation of meeting time.

John,

I was literally picking up the phone to speak with you when the email arrived.

Wednesday July 18 @ 10:00 a.m. for a conference call is fine. Dan Mount and I are both available, as is Mr. Mayder. Dan has a 12:00 appointment, but that should give us sufficient time to initially discuss the situation.

Kevin

From: John Fowler [mailto:jfowler@be-law.com]
Sent: Monday, July 16, 2007 3:43 PM
To: Kevin M. Pasquinelli
Cc: Daniel S. Mount; Michelle McManus; Shauna Walker
Subject: RE: Potential Meeting times

Kevin:

Wednesday July 18, at 10 AM. Please confirm that Mr. Mayder will be on the call. Mr. Leventhal will be on our side of the call. After you confirm my secretary will provide the conference call numbers.

Jay Fowler

From: Kevin M. Pasquinelli [mailto:kpasquinelli@MOUNT.com]
Sent: Friday, July 13, 2007 6:18 PM
To: John Fowler
Cc: Daniel S. Mount; Kevin M. Pasquinelli; Michelle McManus
Subject: Potential Meeting times

Jay,

Dan Mount is available for discussions in the Verigy/STS matter on the following dates and times:
Tuesday, July 17 1-5
Wednesday, July 18 9-11:30 and 2-5
Thursday, July 19 11-1, 3-5

Let me know which of these times you team can make it and I will confirm Romi's availability for those times.

Thanks,

Kevin

Kevin Pasquinelli, Esq.
Mount & Stoelker P.C.
RiverPark Tower, Suite 1650
333 W San Carlos

11/15/2007

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